

Lummi Nation Wetland Management Program – Regulatory Activities



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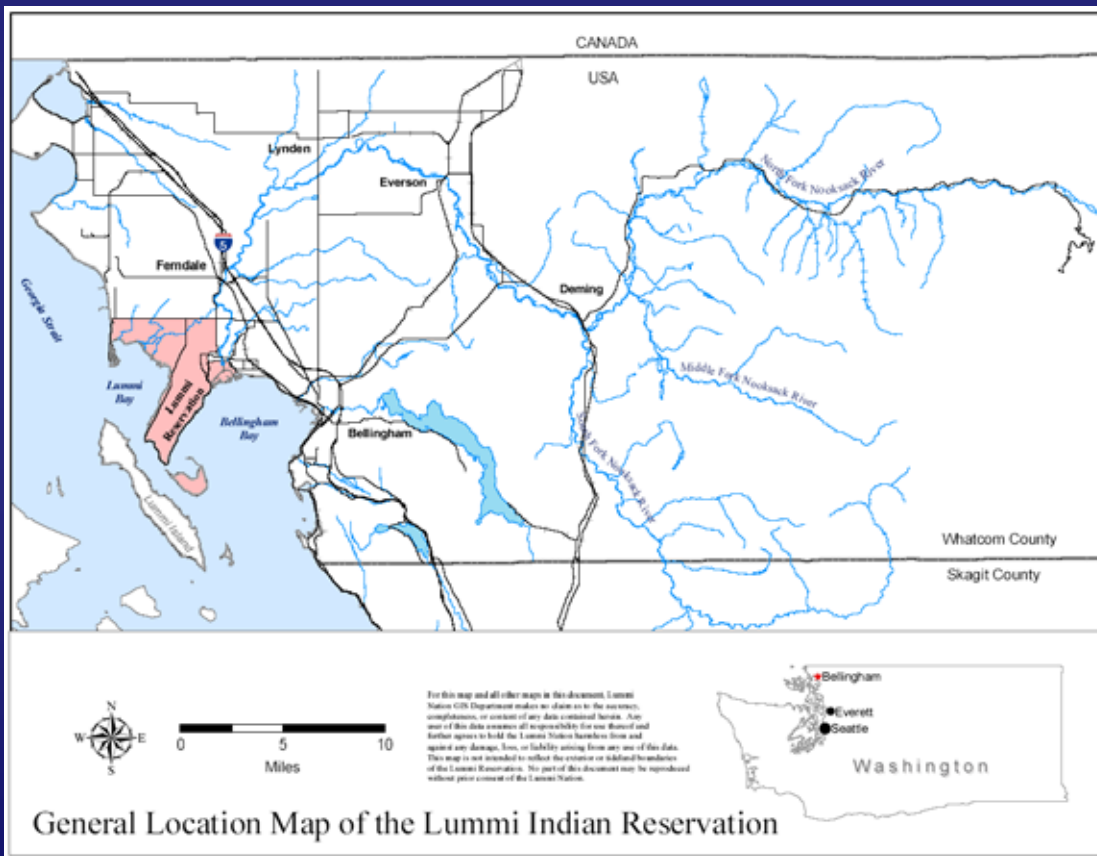
Purpose Statement

- The purpose of this presentation is to:
 - Briefly describe the Lummi Reservation;
 - Provide the context of the Lummi Wetland Management Program;
 - Summarize the Lummi Wetland Management Program Development;
 - Summarize the Lummi Government's Regulatory Activities Related to Wetland Management; and
 - Answer questions.
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Lummi Indian Reservation



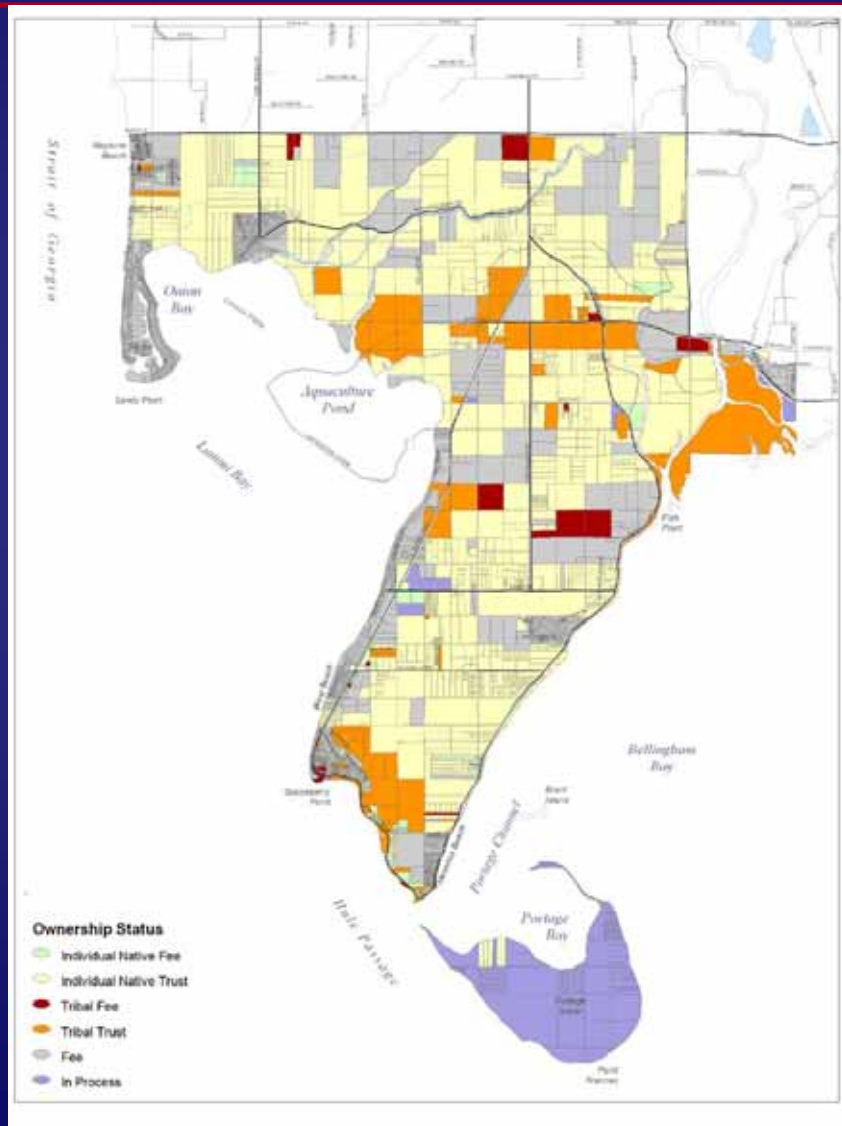
Reservation Location



- The Lummi Indian Reservation was created and reserved for the exclusive use of the Lummi people by the 1855 Point Elliot Treaty
- The Reservation is intended to be a permanent, economically viable homeland for the Lummi people.



Lummi Reservation Today



- Lummi Reservation comprised of approximately 12,500 acres of upland and about 7,000 acres of tidelands.
- Lummi Nation and/or enrolled members own about 75 percent of uplands.
- Lummi Nation owns 100 percent of tidelands.

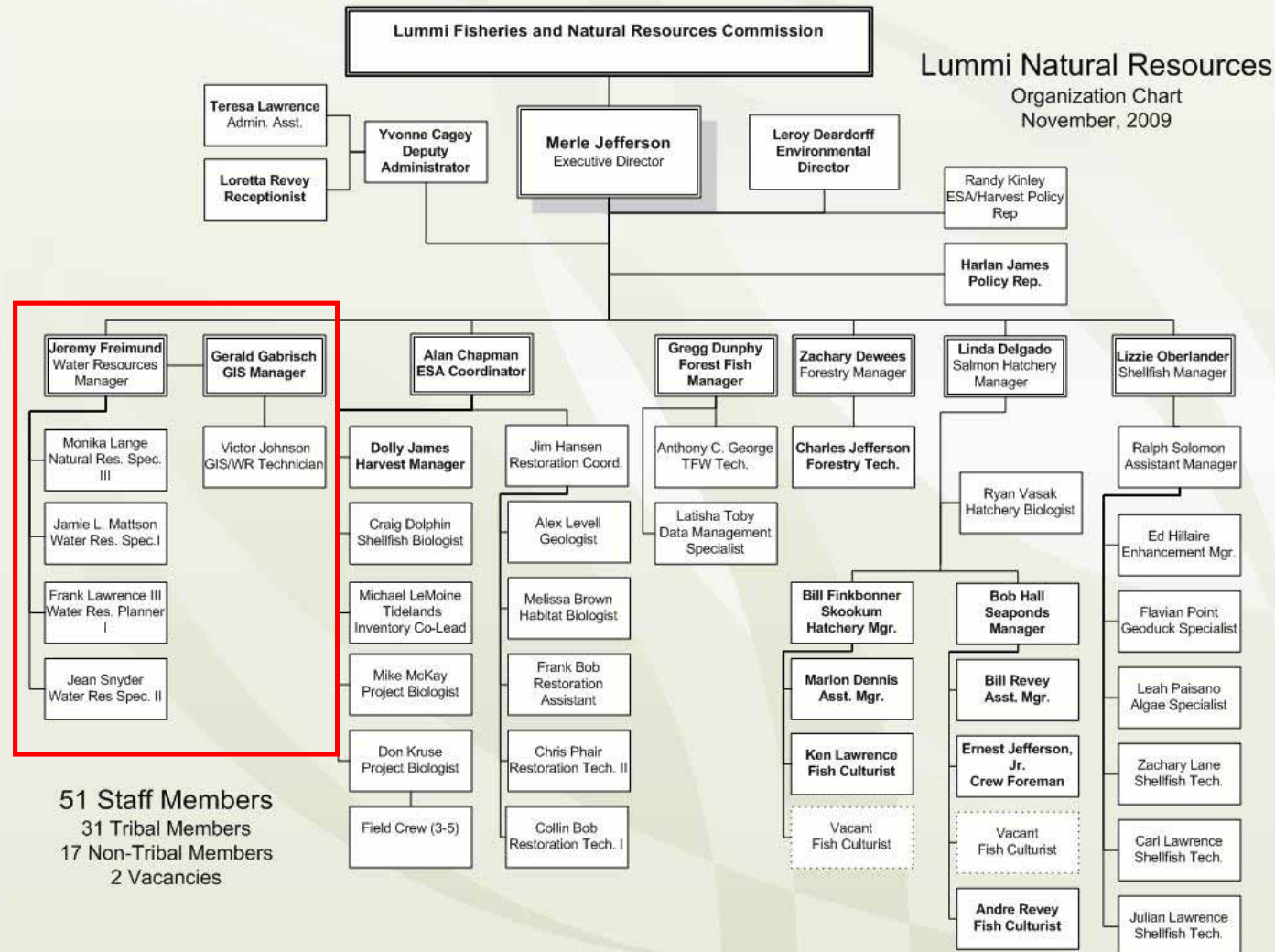
Lummi Wetland Management Program Context



Lummi Water Resources
Division and the CWRMP



Water Resources Division





Mission Statement

The Lummi Water Resources Division is responsible for protecting, restoring, and managing Lummi Nation waters, including Reservation shorelines, in accordance with the Lummi Code of Laws and the policies, priorities, and guidelines of the Lummi Nation.

Water Resources Division Goals



1. Provide technical support to policy and legal staff in LIBC, judicial, and government-to-government processes in order to protect Treaty rights to water of sufficient quantity and quality for:
 - (a) The purposes of the Reservation as a permanent, economically viable homeland for the Lummi People; and
 - (b) To support a sustainable, harvestable surplus of salmon and shellfish.
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Water Resources Division Goals



2. Develop and implement a Comprehensive Water Resources Management Program (CWRMP), which includes the Lummi Nation Water Resources Protection Code (Title 17).
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Comprehensive Water Resources Management Program (CWRMP)



- The CWRMP started in the 1980s with the establishment of the Water Resources Task Force, which became the Water Resources Division during the 1990s.
 - A two-stage development approach was implemented starting in mid-1996 with the hiring of a third FTE – we now have 5.5 FTEs.
 - The two-stages of the CWRMP development effort are:
 - Technical – Technical Background Documents
 - Legal/Policy – Ordinance/Water Code Development
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CWRMP



- Stage 1 – Technical Foundation (Summarized in Technical Background Documents):
 - Wellhead Protection
 - Storm Water Management
 - Wetland Management
 - Water Quality Standards
 - Non-Point Source Assessment
- Watershed Based Approach



CWRMP

- Technical background documents are based on literature reviews, field studies, and water resource data collection and analysis:
 - Ground Water Monitoring Program
 - Surface Water Monitoring Program
 - Wetland Inventory
 - Database Management
 - Geographic Information System (GIS)/LiDAR
 - Other Technical Studies (e.g., hydrology, habitat, forest inventory)
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CWRMP



- Stage 2 –Water Code Development:
 - Step 1 – Literature review of similar federal, tribal, state, and local ordinances
 - Step 2 – Drafting of code sections/chapters
 - Separating regulation language from ordinance
 - Step 3 – Public Comment Period
 - Step 4 – Code adoption and implementation
 - Step 5 – Regulation development and implementation
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CWRMP



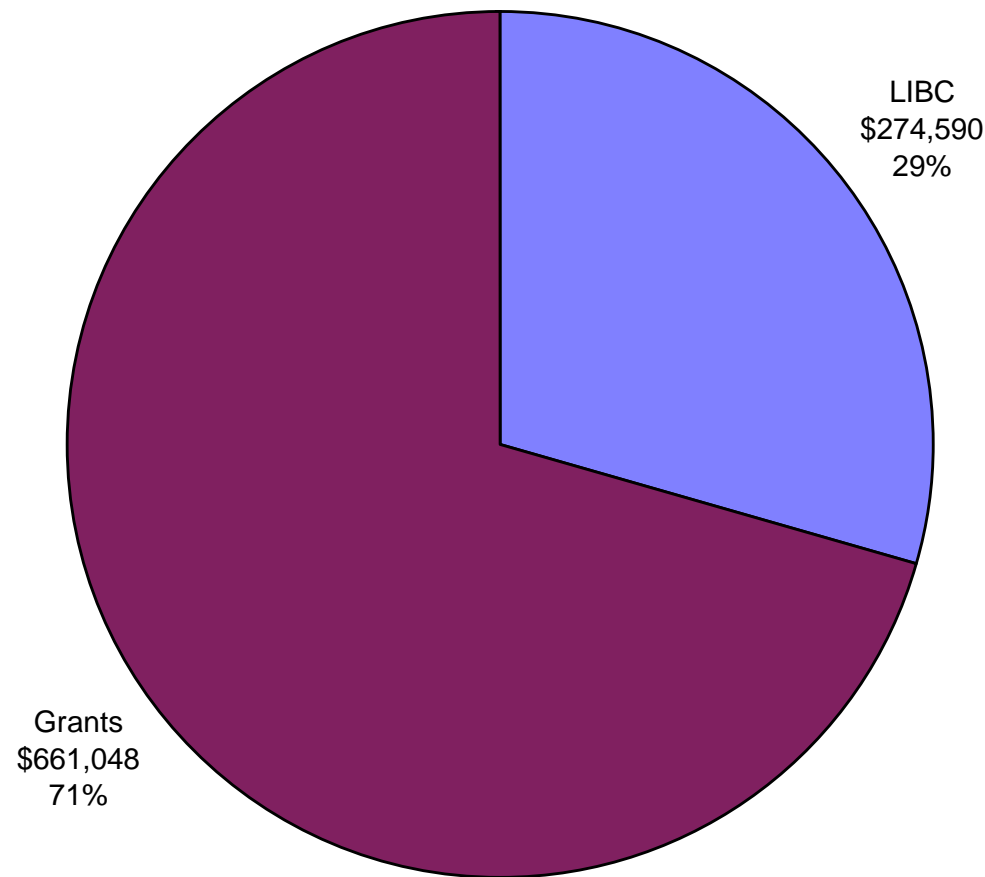
- Water Resources Protection Code (Title 17)
 - The Lummi Water Resources Protection Code was approved and adopted in January 2004 – nearly 30 years after an initial version was developed.
 - Lummi first adopted a Water Code in October 1974 – pursuant the Lummi Constitution, Secretarial approval was required.
 - In January 1975 the Department of Interior issued a moratorium on the approval of tribal water codes.
 - In 1997, the Lummi Constitution was amended to remove the Secretarial approval requirement for tribal codes/ordinances that affect non-members and transferred this responsibility to the General Council.
 - Regulation Development Continues
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CWRMP Funding Sources

- Lummi Indian Business Council (LIBC – Governing body of the Lummi Nation)
 - Bureau of Reclamation
 - Environmental Protection Agency
 - Section 106
 - General Assistance Program
 - Section 319
 - Section 104(b)(3)
 - Bureau of Indian Affairs
 - Other funding sources also used for Water Resource Division activities/special projects.
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2009 Lummi Water Resources Division Budget



Lummi Wetland Management Program History



Pre-1999



- GIS capabilities developed using EPA Multi-media grants.
- Wetland information limited to National Wetland Inventory (NWI) and project specific wetland delineations.
- Reliability/usefulness limited.
- Efforts focused on obtaining funding to conduct a Reservation-wide wetland inventory.

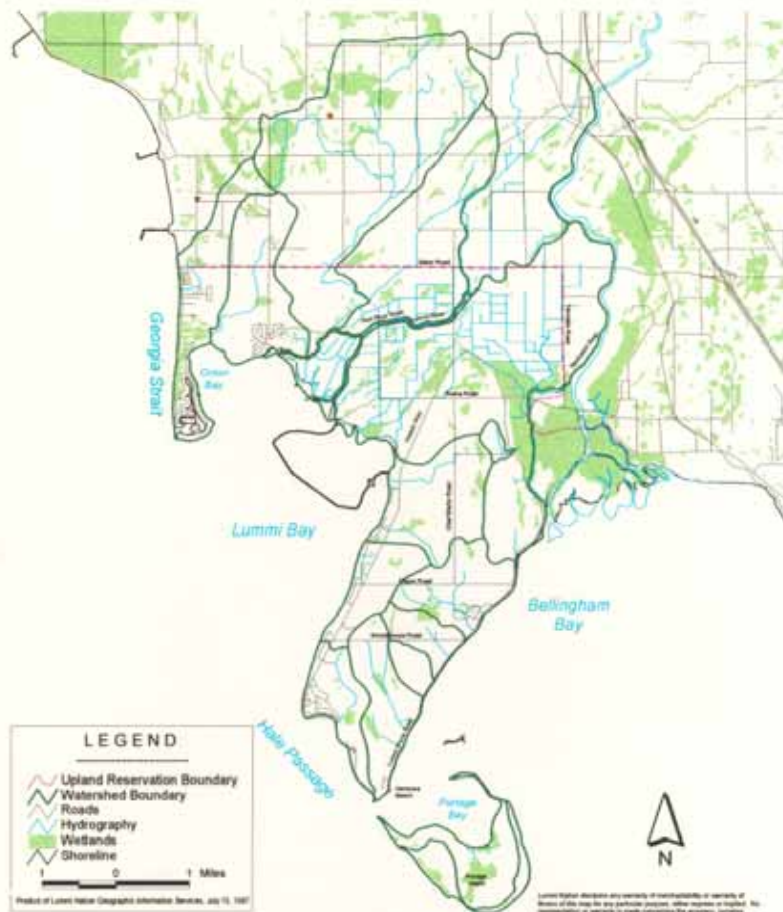


Figure 2.6 Surface Waters of the Lummi Reservation

1999 Reservation-Wide Wetland Inventory

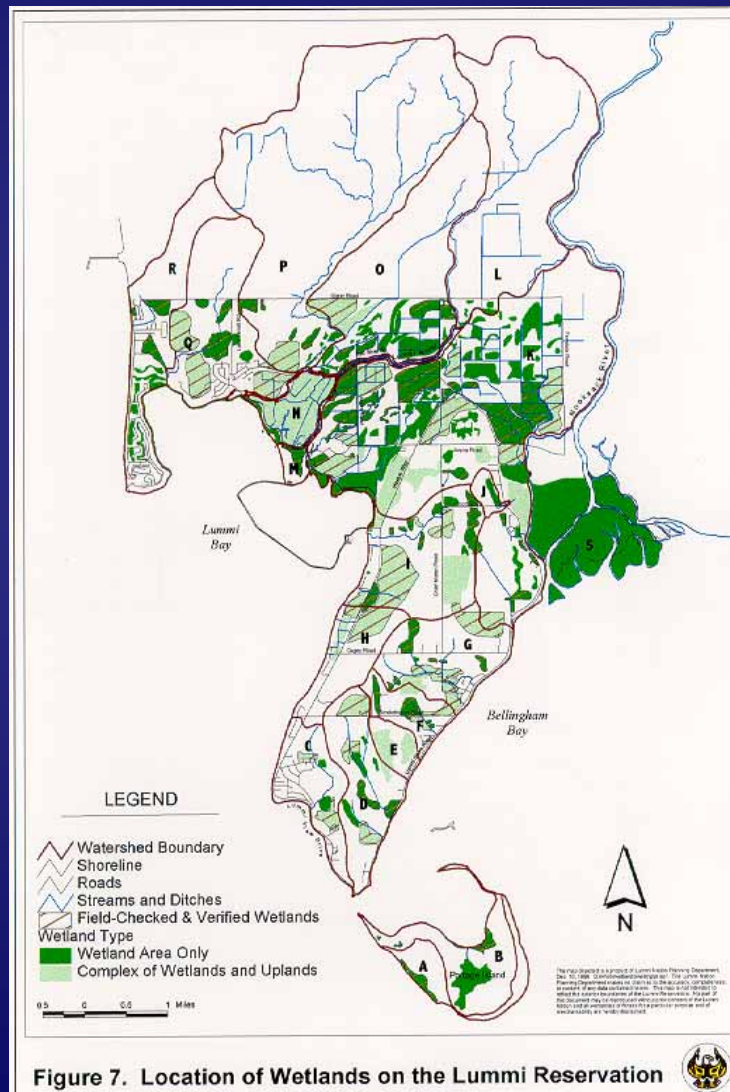


Figure 7. Location of Wetlands on the Lummi Reservation

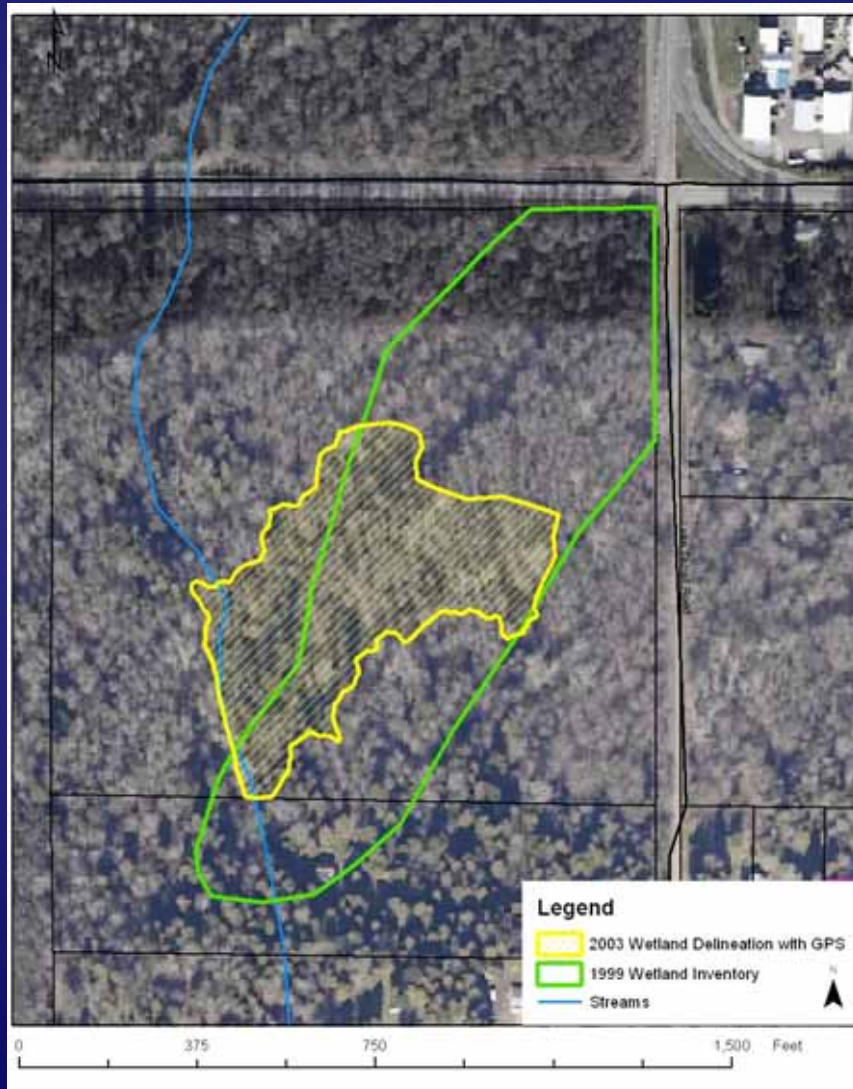
- GAP grant was used to fund the wetland inventory and a Section 104(b)(3) grant used to develop the technical background document.
- Due to budget constraints, data availability, and scale of effort:
 - Wetland inventory based on soil surveys, aerial photograph interpretation, and limited field verification,
 - Wetlands versus Wetland Complexes,
 - Big improvement over NWI but still limited accuracy.
- Inventory results indicated ~43 percent of upland area are wetlands (60% are in the flood plain areas)
- Technical Background document completed in 2000, contracted wetland inventory was appendix.



2000 – 2004 Period

- Wetland Regulation Literature Review (2001)
 - Wetland Mitigation Banking Assessment Report (2002)
 - Lummi Delta Wetland Mitigation Banking Site Assessment (2003)
 - Water Resources Protection Code Adoption (2004)
 - Wetland Mitigation Bank Prospectus (2004) – Version 1...
 - Grant funds not available to further develop the wetland mitigation bank after 2003/2004.
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Lummi Wetland Inventory Update – Year 1 (2005)



- Effort to improve reliability of the 1999 Reservation-wide wetland inventory using new tools (GPS, LiDAR, high-resolution aerial photography) and staff capabilities.
- Goals of effort are to:
 - Improve spatial accuracy/resolution of inventory,
 - Classify wetlands to determine buffer widths,
 - Function assessments (abandoned)
- Multi-year effort now expected to take at least 7 years to complete.

Wetland and Habitat Mitigation Bank

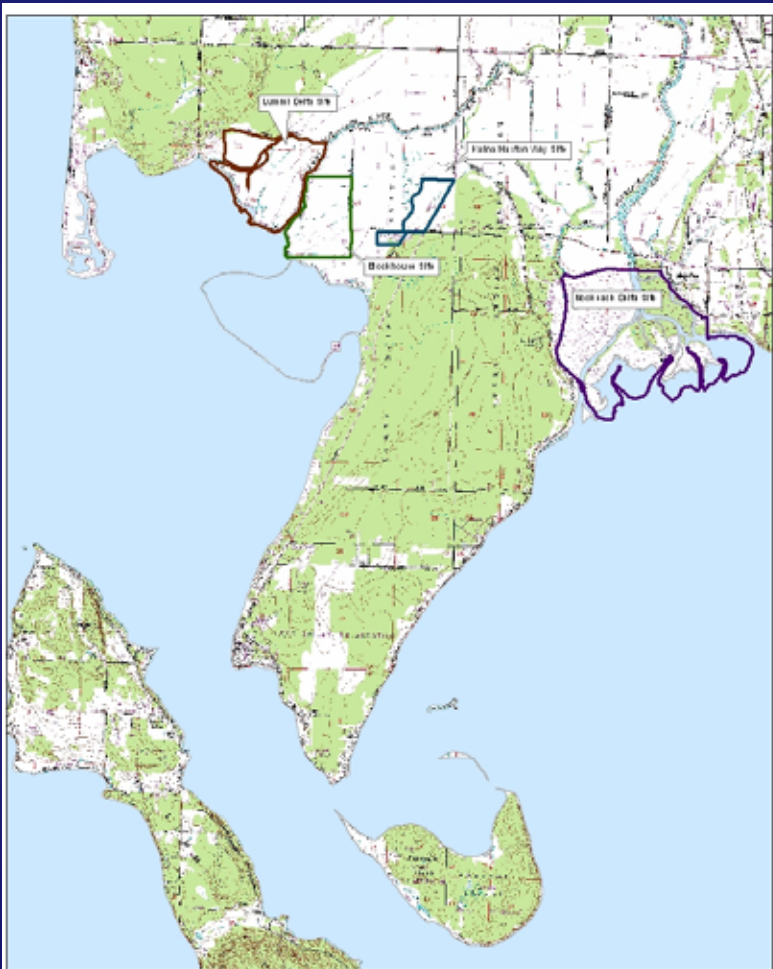


Figure 3 - Location of Proposed Mitigation Bank Sites

- Initiated following the completion of the assessment report in 2002.
- Version 3 of the Mitigation Bank Prospectus was published in October 2008.
- Corps of Engineers public comment period ended in January 2009.
- Single mitigation bank comprised of three separate locations – now being developed in Phases
- Scheduled to complete Phase 1A by March 31, 2010.
- Challenging endeavor....

Lummi Wetland Management Program Regulatory Activities





Lummi Code of Laws Title 17

- Water Resources Protection Code (Title 17)
 - 17.01 General Provisions
 - 17.02 Water Resources Manager
 - 17.03 Permit System for Water Use
 - 17.04 Wellhead Protection
 - 17.05 Storm Water Management
 - 17.06 Stream and Wetland Management
 - 17.07 Water Quality Standards
 - 17.08 Prohibited Acts, Enforcement, Review, and Appeals
 - 17.09 Definitions
- Implementation tied to LCL Title 15 – Land Use Zoning and Development Code

LCL 17.01



- General Provisions
 - Findings
 - Purpose
 - Applicability – All Reservation residents regardless of membership status.
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LCL 17.02

- Water Resources Manager
 - Appointment/Removal
 - Qualifications
 - Powers and Duties
 - Water Resources Manager
 - Executive Director
 - Natural Resources Commission
 - Promulgation of Regulations
 - Public Records



LCL 17.06

- Stream and Wetland Management
 - Findings and Purpose – no net loss.
 - Permit Requirements – through TRC/Planning Dept.
 - General Standards
 - Regulated Activities
 - Exempt Activities
 - Wetland Classification System (Category 1 – Category 4)
 - Non-Regulated Wetlands
 - Wetland Boundary Determinations
 - Wetland Buffer Requirements (100 feet to 25 feet)
 - Adjustments to Standard Buffers (buffer averaging)
 - Wetland Mitigation (sequential mitigation, mitigation plans, mitigation banking)



LCL 17.06 Regulations

- Current Status – developed/drafted, pending approval and adoption.
 - Contents:
 - Wetland Rating and Function Assessment Methods
 - Wetland Mitigation Principles (sequential mitigation)
 - Elements of a Wetland Mitigation Plan
 - Wetland Mitigation Ratios
 - Wetland Mitigation Plan Checklist
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LCL 17.07



- Water Quality Standards
 - Findings and Purpose
 - Rule Making Authority
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LCL 17.07 Regulations

- Current Status – Adopted.
 - EPA delegated 401 and 303(c) authority to the Lummi Nation in March 2007.
 - Lummi Adopted Surface Water Quality Standards in August 2007.
 - EPA approved the Lummi Surface Water Quality Standards in September 2008.
 - Lummi must issue 401 Certification before an applicant can obtain a Section 404 permit from the Corps of Engineers for projects affecting Lummi Nation Waters.
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LCL 17.08



- Prohibited Acts, Enforcement, Review, and Appeals
 - Prohibited Acts.
 - Judicial Enforcement
 - Non-Judicial Enforcement by the Executive Director
 - Appeals to the Natural Resources Commission
 - Appeals to the Tribal Court
 - Limited Sovereign Immunity Waiver
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LCL 17.08 Regulations

- Current Status – developed/drafted, pending approval and adoption.
 - Contents:
 - Civil Fine Assessments
 - Impact Assessment
 - Severity of Impact
 - Civil Fine Assessment Calculation Matrix
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LCL 17.09



- Definitions
 - Lummi Nation Water
 - Adjacent Wetlands
 - Contiguous Wetlands
 - Isolated Wetlands
 - Etc...
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Example Title 17 Application: Regulating Wetlands



- Step 1 – Project proponent submits a Lummi Land Use Permit Application to the Lummi Planning Department.
- Step 2 – Technical Review Committee (TRC) receives copy of application, LNR representatives use the tribal GIS to determine if wetlands may be affected by the proposed action, and TRC conducts a joint site visit to field verify conditions.
- Step 3 – If wetlands encountered on site, the wetland boundary is delineated and the wetland classified to determine the buffer width.
 - Depending on size of wetland and type of project, LNR staff or private consultant performs wetland evaluation.
- Step 4 – Meet with project proponent to discuss findings and to determine ways to avoid, minimize, and/or mitigate wetland impacts.
- Step 5 – TRC members issue comments and conditions including any modifications to initial proposal.
- Step 6 – Lummi Planning Dept. issues conditional land use permit.
- Step 7 – LNR provides technical assistance if practicable.

Wetland Management Program Future Actions



- Execute Mitigation Banking Instrument (MBI) for Phase 1A of the Lummi Nation Wetland and Habitat Mitigation Bank (WHMB) by March 31, 2010.
- Continue Title 17 implementation – adopt new wetland regulation by June 30, 2010.
- Continue project review and tribal permitting.
- Continue to evaluate Section 404 permit applications and issue 401 Certifications where warranted.
- Continue to provide oversight of wetland mitigation project monitoring (Lummi Casino Project)
- Complete Wetland Inventory Update by December 2012.
- Revisit establishment of a Regional General Permit for the Lummi Reservation by December 2013.
- Complete Mitigation Banking Instrument for all phases of the Lummi Nation WHMB by 2013.
- Manage/Administer the Lummi Nation WHMB.

Summary and Conclusion





Summary and Conclusion

- Lummi water code development included technical and legal/policy stages and is the foundation for regulating Reservation wetlands.
 - Wetland management is a component of the Lummi Nation's overall watershed-based water resources management program.
 - Qualified and committed technical, legal, and policy staff are needed to develop and implement the program.
 - Tribal laws, including those related to wetland management, are a foundation of tribal jurisdiction and self-governance.
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Summary and Conclusion

- Wetland and habitat mitigation banks are an administratively efficient and ecologically preferable approach to achieve the Lummi Nation and federal goals related to ensuring no net loss and, in the long-term to achieve a net gain in wetland functions, while meeting tribal demands for housing, municipal, and commercial development.
- However, mitigation banks are very difficult and time consuming to establish and must largely be developed and implemented using “tribal hard dollars” rather than grant funds.

Questions??



Copies of wetland technical background documents and Lummi Code of Laws available at www.lummi-nsn.gov